

REMARKS

The present amendment is submitted in response to the final Office Action mailed November 28, 2005. By this amendment, independent claims 11 and 20 and dependent claims 18, 21 and 22 have been canceled without prejudice. The cancellation of these claims is not to be construed as an admission to the viability of the rejections thereof presented in the Office Action but rather is being done to expedited prosecution of this application. Applicant further reserves the right to file continuation/divisional applications directed to the subject matter of these claims. New independent claim 23 has been added and incorporates the subject matter of previously presented claims 12-16; thus, no new issues are presented with this new claim.

Claim 11 stands rejected under 35 U.S.C. §102(b) by U.S. Patent No. 4,719,825 to LaHaye et al. Claim 11 has been canceled by this amendment.

Claims 11-16 and 20-22 stand rejected under 35 USC 102(e) by U.S. Patent No. 6,056,737 to Rosen. Independent claims 11 and 20 have been canceled without prejudice. With regard to independent claim 12, it is respectfully submitted that the present invention as recited by claim 12 is patentability distinguishable from Rosen '737. The Rosen '737 device incorporates an outer housing 20, a completely enclosed glass tube 30 containing a solvent 33 disposed within the housing 20, a cap 40 and a marking nib 50. The marking nib 50 is made of a porous inert material such as polyester, cellulose fiber or open celled foam etc. In use the glass tube 30 is fractured to permit the solvent 33 to pass through the marking nib 50.

Thus, with respect to independent claim 12, Rosen '737 fails to teach or suggest the recited "a surgical needle mounted to said ink cartridge". The nib 50 of the Rosen '737

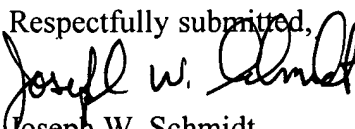
device is not a surgical needle. With further regard to depending claim 13 which depends from independent claim 12, Rosen '737 fails to disclose an ink cartridge defining a port. The glass vial or tube 30 of Rosen '737 is completely enclosed and thus cannot define a port as required by this claim. With regards to claim 14 which depends from claims 13 and 12, Rosen' 737 does not define an enclosure for covering the port. There is no port associated with the glass vial 30 of the Rosen '737 device, thus, there can be no enclosure. Furthermore, cap 40 of the Rosen '737 device can not be considered equivalent to the recited enclosure because 1) there is no defined port in the glass vial 30 and/or 2) the cap 40 can not function to cover any port because it defines an internal lumen and thus cannot prevent flow of fluid from the glass vial 30 (or the housing 20) once the vial 30 is crushed. With regard to dependent claims 14 and 15, there is no teaching or suggesting of either the cap 40 or nib 50 being releasably mounted to the vial 30 or housing 20.

Claims 12, 18 and 19 stand rejected under 35 U.S.C. 102(e) by U.S. Patent No. 6,197,034 to Gvozdic. Gvozdic '034 discloses a marking device in which in the embodiment of Figure 6, a dispensing device 17 having a depressible button 18 is used to dispense ink through the hollow tube 4. It is respectfully submitted that the present invention as recited by claim 12 is patentability distinguishable from Gvozdic '034. For example, Gvozdic '034 fails to teach or suggest the recited "said ink cartridge is substantially flexible to permit the operator to manually deform said ink cartridge by direct engagement of said ink cartridge with a hand of the operator to dispense said tattoo ink through said port". Gvozdic '034 is not structured or capable to dispense ink from its housing 2 by direct engagement by the user. Rather, the depressible button 18 of the dispensing device 17 is used to effect fluid dispensing. Accordingly, withdrawal of this rejection is respectfully requested.

In view of the foregoing amendments and remarks, reconsideration of the rejection and objections and allowance of the claims are earnestly solicited. Accordingly, early and favorable reconsideration of this application is respectfully requested. Should the Examiner feel that a telephone or personal interview may facilitate resolution of any remaining matters, she is respectfully requested to contact Applicant's attorney at the number indicated below.

It is respectfully submitted that none of the references of record disclose or suggest the present invention as claimed in the claims as amended, considered individually or in combination, with themselves, considered in whole or in part. Accordingly, withdrawal of the rejections and objections is respectfully requested.

Please charge any deficiency as well as any other fee(s) which may become due under 37 C.F.R. §1.16 and/or 1.17 at any time during the pendency of this application, or credit any overpayment of such fee(s) to Deposit Account No. 50-2140. TWO (2) COPIES OF THIS SHEET ARE ENCLOSED.

Respectfully submitted,

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